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Item 6 (b) (iii) of the provisional agenda*
Discussion of substantive issues related to international cooperation in tax matters: other issues: foreign direct investment issues and corporate taxation, including resource taxation issues for developing countries

Foreign direct investment issues and corporate taxation, including resource taxation: issues for consideration by the Committee

Note by the Secretariat**

Introduction

1. Foreign direct investment issues and corporate taxation, including resource taxation issues for developing countries, is on the agenda for the ninth session of the Committee of Experts on International Cooperation in Tax Matters under agenda item 6 (b) (iii).

2. At the seventh session, and with the latest update of the United Nations Model Tax Convention completed, the Committee decided that it would be useful to examine a series of issues through the presentation of papers at the eighth session. Robin Oliver (then a member of the Committee) was tasked with a presentation on foreign direct investment issues focusing on the relevance of economic rents in that context. The presentation drew in part on a note on the use of tax incentives to attract foreign direct investment (E/C.18/2010/CRP.13) that had been presented by Stefan van Parys of the University of Ghent, representing the World Bank Group at the sixth annual session of the Committee in 2010.

3. The presentation by Mr. Oliver considered how tax on foreign capital

* E/C.18/2013/1.

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negatively affects the volume of investment, resulting in lower wages and/or higher unemployment. Issues of location-specific economic rents and their relevance or otherwise to articles 5 and 7 of the United Nations Model Tax Convention on permanent establishment and business profits, article 6 on income from immovable property, article 9 on associated enterprises, article 10 on dividends, article 11 on interest and article 12 on royalties were discussed. Issues other than those related to the extractive industries are not addressed in the present note.

4. Following the presentation, the Committee discussed issues such as location-specific rents associated with natural resources and the need for appropriate tax policies for resource exploitation. According to a number of participants, many developing countries were losing out on such revenue. Those exploiting the resources were often provided with tax exemptions that could not be economically justified, while their activities led to externalities, for example environmental damage, that negatively affected local communities, which were often not appropriately compensated.

Expert meeting

5. With a view to assisting the Committee in addressing the agenda item, the Financing for Development Office of the Department of Economic and Social Affairs of the Secretariat organized a one-day expert group meeting on 28 May 2013.

6. The aim of the meeting was to (a) identify the pressing issues of developing countries in the area of taxation of the extractive industry; (b) determine the needs for guidance on those issues; (c) inform the work of the Committee on how it might make a unique contribution in the field while working constructively with others; and (d) bring together the different stakeholders involved in those issues.

7. The discussions focused on the issues that developing countries face when designing and administering an extractive industries fiscal regime with a view to ensuring that the United Nations tax cooperation work can further support developing countries in that important area of development. During the meeting, participants from national tax authorities, international organizations, non-governmental organizations and the private sector considered the question of international tax cooperation in the extractive industries sector, including institutional arrangements to promote such cooperation.

8. A detailed report of the meeting summarizing the presentations by participants and the ensuing discussions will be made available on the website of the Financing for Development Office (un.org/esa/ffd) before the ninth annual session.

Possible areas of engagement

Investment climate

9. The Committee may wish to discuss the importance of a conducive investment climate to encourage investment, which in turn can contribute to sustainable development. At the same time, the role of tax incentives can be scrutinized and the impact they may have on a country's revenue base, e.g., its ability to finance schools, hospitals and other public goods, can be assessed. Moreover, the

Committee might consider how a "race to the bottom" in the provision of tax incentives can be avoided, including by ensuring that any such incentives are properly designed, monitored for effectiveness and abuse and kept up to date. The need for a diversified economy and revenue base is also relevant in that respect.

Special features of the sector

10. The Committee might address the special features of the extractive industries, including the relevant differences between various types of extractive industries as well as features that are common to all of them, and what they potentially signify for a country's development path. That includes, but is not limited to, the revenue volatility from those industries, the difficulty of designing appropriate tax systems to tax economic rents, the need for transparency from the government and the private sector and the tax-related issues of dealing with negative environmental externalities.

Role of different actors

11. In their deliberations, the Committee will need to bear in mind the respective roles of different international organizations active in the area, including the International Monetary Fund, the World Bank and the Organization for Economic Cooperation and Development as well as regional and other organizations. The goal is to ensure that the United Nations tax cooperation work can further support developing countries in that important area of development (especially through cooperation between such countries) while avoiding unnecessary duplication and fragmentation but allowing for the possibility for developing countries to receive "second opinions" on issues of particular relevance to them.

12. Moreover, the Committee might consider it appropriate to explore the roles, rights and responsibilities of taxpayers, their advisers and non-governmental actors in that area.

13. The Committee might also examine how the taxation of the extractive industries relates to other topics currently under discussion in the Committee and other forums, such as transfer pricing, the taxation of services, the exchange of information and value-added taxes, as well as building institutional and administrative capacities.

Immediate issues

14. At the eighth session, it was decided that a working group would be formed to address the specific issues of natural resource extraction and tax revenue for developing countries. Given the limited time that such a working group would have had before it "expired" at the end of June 2013, such a group was not formed. The decision on the formation and mandate of such a group is now left to the new membership of the Committee.

15. Issues the Committee may wish to consider include the following:

(a) The priority that should be accorded to the present work and its particular elements;

(b) The expected deliverables (e.g., a policy and/or administration "toolkit" for developing countries, specific technical or administrative guidance and recommendations or other practical needs-driven measures of support);

(c) The mandate of the working group or subcommittee and which of those two forms it should take;

(d) The relationship to work being conducted by other organizations and entities, including aspects of the work related to the United Nations Model Tax Convention;

(e) The extent to which any such working group or subcommittee should be asked in their mandate to consider certain issues, while leaving available the option for that body to recommend other such issues for consideration;

(f) The Coordinator for any such working group or subcommittee (traditionally chosen from among Members of the Committee, when possible);

(g) The extent to which the membership of any such working group or subcommittee should be determined at the annual session, could be agreed upon later or could be left to the discretion of the Coordinator, bearing in mind the need for broad and balanced representation in practical terms;

(h) The need for different working groups or subcommittees to consult on issues that have obvious "cross-cutting" aspects.